

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 3, 2005

IN RE:

PETITION OF UNITED TELEPHONE-SOUTHEAST,
INC. FOR DECLARATORY RULING

REQUEST OF THE INFORMATION BUREAU, INC.
FOR A PUC DIRECTIVE

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)
) DOCKET NO.
) 05-00152
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)

ORDER GRANTING JOINT MOTION TO DISMISS

This matter came before the Hearing Officer upon the filing of *United Telephone-Southeast, Inc.'s and The Information Bureau, Inc.'s Joint Motion to Dismiss Docket Nos. 05-00152 and 05-00156 With Prejudice ("Joint Motion")* on November 1, 2005.

BACKGROUND

On May 27, 2005, United Telephone-Southeast, Inc. ("Sprint") filed a *Petition for Declaratory Ruling ("Petition")* requesting a declaratory ruling "as to the applicability of provisions of the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO") to DS1 switching for the enterprise market." Specifically, Sprint asked for an order from the Authority finding:

That paragraph 451 and 47 C.F.R. § 51.319(d)(3) as set forth in the FCC's TRO Order (CC Docket 01-338) issued on August 21, 2003, eliminated the requirement for Incumbent Local Exchange Carriers ("ILECs") to provide DS1 switching for the enterprise market. [and] . . . Sprint no longer has an obligation to provide DS1 switching at Total Element Long Run Incremental Cost (TELRIC) based Unbundled Network Element (UNE) rates and may price these elements at market based prices.¹

¹ *Petition*, p 1 (May 27, 2005)

According to Sprint, a ruling by the Authority on this issue was required because in the midst of negotiating a new interconnection agreement between Sprint and The Information Bureau, Inc. ("TIB"), the parties reached an impasse over this issue. Under the terms of the earlier interconnection agreement that expired on October 31, 2004, Sprint provided TIB a combination of an unbundled DS1 Loop and unbundled DS1 switching for the enterprise market. Sprint alleged that the negotiations halted due to "TIB's refusal to accept the FCC's decision that DS1 switching is no longer available at TELRIC pricing."² According to Sprint, the parties were presently operating under the terms of the expired agreement on a month-to-month basis.

TIB filed a letter ("*TIB's Request for PUC Directive*") requesting a directive or order from the Authority requiring Sprint "to continue to honor their previous contract with TIB for PRI lines until there is a Final ruling from the Federal Courts and the FCC regarding UNE-P services."³ *TIB's Request for PUC Directive* was filed on June 3, 2005 and was assigned Docket No. 05-00156. In lieu of a separate response to *TIB's Request for PUC Directive* in Docket No 05-00156, Sprint filed a letter on June 17, 2005 requesting that the Authority accept the positions set forth in its *Petition* as its response and filed a motion to consolidate both dockets.

On July 11, 2005, TIB filed a letter providing a general outline and response for both dockets ("*TIB's Response*"). TIB asserted that the problem arose from the TRO and that in April 2004, the FCC ruled that an ILEC does not need to provide UNE-P products to a competitive local exchange carrier ("CLEC"). According to TIB, the original order was challenged in court and was reversed and, subsequently, a total of three orders were issued by the FCC and all were reversed. TIB further stated that in October 2004, the FCC issued another order and, because it had been challenged in court, it was very possible that the court could reverse the FCC again.

² *Petition*, p. 2 (May 27, 2005)

³ *TIB's Request for PUC Directive*, p. 2 (June 3, 2005) This document is dated May 19, 2005 but was not docketed and a file was not opened until June 3, 2005 when the TRA received the requisite number of copies and filing fee

TIB asserted that after the FCC issued the first order in April 2004, Sprint increased UNE-P line charges by 70%. TIB states that, even though the FCC order was reversed by the court, Sprint has continued to bill TIB at the higher rate which TIB cannot afford. TIB requested that the Authority delay implementation of the FCC order until the court gives a final ruling. TIB suggested that another option was for the Authority to direct both the ILEC and CLEC to continue UNE-P rates at (1) the current contractual arrangement; (2) at \$1 premium per month as directed by the FCC order; or (3) to set a small monthly premium (such as 15%) until a final decision is made by the FCC and approved by the courts.

At a regularly scheduled Authority Conference held on July 11, 2005, the panel assigned to this docket voted unanimously to appoint a Hearing Officer to determine, prior to July 27, 2005, whether to set this matter for a contested case proceeding. If such a hearing were set, the Hearing Officer was directed to (1) resolve any preliminary matters, including the motion to consolidate; (2) prepare the matter for hearing by the panel; and (3) prepare and send out a notice in accordance with Tenn. Code Ann. § 4-5-224 (1998).⁴

On July 18, 2005, TIB filed a letter ("*TIB's Modified Response*"), which reiterated the points made in its July 11, 2005 letter. TIB further suggested that "if, after the final order by the FCC an ILEC or CLEC owes money to the other, then the debt can be satisfied at that time."⁵ On July 20, 2005, Sprint filed a letter with the Authority seeking to clarify that it was only requesting a declaratory ruling concerning its obligation to sell DS1 enterprise switching pursuant to Section 251 of the 1996 Telecom Act with its TELRIC based pricing requirements. Sprint further stated that it was not requesting the TRA to determine which pricing standard

⁴ Also during the July 11, 2005 Authority Conference, the panel assigned to Docket No 05-00156 voted unanimously to appoint a Hearing Officer to resolve preliminary matters, including the motion for consolidation and request for intervention, and prepare the matter for hearing by the panel. See Transcript of Authority Conference, pp 42-44 (July 11, 2005)

⁵ *TIB's Modified Response*, p 3 (July 18, 2005)

would be appropriate for any offering of DS1 enterprise switching outside of its Section 251 obligations.

On July 25, 2005, Sprint filed the *Response of United Telephone-Southeast, Inc to The Information Bureau's Response of July 12, 2005 and Modified Response of July 18, 2005*. Sprint disagreed with TIB's claims that the issue of whether ILECs are required to provide DS1 switching was pending before the federal courts and that the provision of DS1 switching was subject to a transition period until March 11, 2006.

An *Initial Order Convening a Contested Case and Granting Motion to Consolidate Dockets* was entered by the Hearing Officer on July 26, 2005, convening a contested case in Docket No. 05-00152 and tentatively setting a Hearing for October 10, 2005, subject to approval by the panel. In addition, Docket Nos. 05-00152 and 05-00156 were consolidated into Docket No. 05-00152 and the parties were directed to file a joint proposed procedural schedule on or before August 9, 2005. As a result of the parties' proposal, a procedural schedule was issued on August 11, 2005, which was modified on August 23, 2005 and September 2, 2005. On September 19, 2005, the parties filed notice of a settlement of the issues in this docket and requested that the procedural schedule be held in abeyance until the parties finalized the written settlement agreement. The Hearing Officer granted that request on September 19, 2005.

JOINT MOTION TO DISMISS

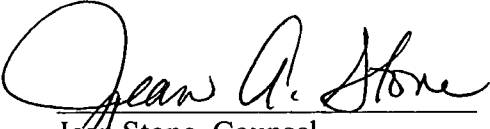
On November 1, 2005, the parties filed the *Joint Motion*, requesting that the Hearing Officer grant a dismissal of Docket Nos. 05-00152 and 05-00156⁶ with prejudice as a result of the settlement of the underlying disputes. The parties also filed a copy of the executed

⁶ Because Docket No. 05-00156 was consolidated into Docket No. 05-00152 and was closed upon the *Initial Order Convening a Contested Case and Granting Motion to Consolidate Dockets* issued on July 26, 2005 becoming final, the Hearing Officer interprets the parties' request to dismiss Docket No. 05-00156 as a request to dismiss TIB's Request for PUC Directive, which originally was filed in Docket No. 05-00156 before consolidation of the two dockets.

*Settlement and Release Agreement.*⁷ Based upon the evidence that a settlement has been reached between the parties, the Hearing Officer finds that the *Joint Motion* is reasonable and should be granted. Therefore, the *Petition for Declaratory Ruling* filed by United Telephone-Southeast, Inc. and *TIB's Request for PUC Directive* filed by The Information Bureau, Inc. are dismissed with prejudice and this docket is closed.

IT IS THEREFORE ORDERED THAT:

1. *United Telephone-Southeast, Inc.'s and The Information Bureau, Inc.'s Joint Motion to Dismiss Docket Nos 05-00152 and 05-00156 With Prejudice* is granted; and
2. The *Petition for Declaratory Ruling* filed by United Telephone-Southeast, Inc. and *TIB's Request for PUC Directive* filed by The Information Bureau, Inc. are dismissed with prejudice and this docket is closed.


Jean Stone, Counsel
as Hearing Officer

⁷ The parties submitted the *Settlement and Release Agreement* under seal pursuant to the *Protective Order* issued on October 17, 2005